

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
W.R. Grace & Co., et al.,)	Case No. 01-01139 (JKF)
)	(Jointly Administered)
Debtors.)	
)	

CLAIMANTS REPRESENTED BY
THE LAW FIRM OF MOTLEY RICE LLC’S
AMENDED DESIGNATION OF FACT AND EXPERT
WITNESSES REGARDING PRODUCT IDENTIFICATION,
LIMITATIONS PERIODS AND THE LIBBY ISSUE
AS DESCRIBED IN THE 15th OMNIBUS OBJECTION

The Claimants¹ represented by the law firm of Motley Rice LLC (hereinafter the “Motley Rice” Claimants) hereby make their Amended Designation of Fact and Expert Witnesses pursuant to the Amended Exhibit B to Order Setting Various Deadlines Regarding Objections To Asbestos Property Damage Claims, attached to the Amended Order Setting Various Deadlines Regarding Objections to Asbestos Property Damage Claims dated October 13, 2006, and more specifically with regard to the Phase for Adjudication Product Identification, Limitations Periods and the Libby Issue.

I.

Product Identification

¹ The Asbestos Property Damage Claimants represented by the law firm of Motley Rice LLC, on whose behalf this Amended Designation of Fact and Expert Witnesses Regarding the Schedule for the Adjudication of Product Identification, Limitations Periods and the Libby Issue, as Described in the 15th Omnibus Objections, is served, include the following: American Legion (Claimant #3406); Catholic Diocese of Little Rock (Claimant #3515); CHP Associates (Claimant #2977); Fargo Housing Authority (Claimant #3405); Port of Seattle (Claimants #9645, 9646 and 9647); and State of Washington (Claimants #6937, 6938, 6939, 6940, 6941, 6942, 6943 and 6944). Preliminary Fact and Expert Designations were filed on behalf of claim claimant pursuant to the Court’s Scheduling Order and are incorporated herein.

Expert Witnesses

Subject Matter of Testimony

The Motley Rice Claimants intend to call during the Adjudication Phase for Product Identification expert witnesses(s) who will testify regarding the micro-analytical testing of asbestos containing material (“ACM”) bulk samples which were obtained from buildings owned or operated by such Claimants and for which a product identification report was filed with the Proof of Claim or supplemented thereto. Such experts witnesses(s) will be qualified and experienced in the fields of materials characterization, microscopy, chemistry and/or similar scientific disciplines and will in their testimony compare the results of the testing of such bulk samples to W.R. Grace’s (“Grace”) known product formulas and/or related formula documents in order to make a match to specific Grace fireproofing and/or acoustical ACM products. Motley Rice Claimants have previously identified Dr. William Longo at MAS and any other person who may be associated with MAS. The written product identification reports identifying Grace as the manufacturer of the ACM products in the Motley Rice Claimants’ buildings, and/or other product identification information, have been filed with the Proof of Claim forms for the buildings at issue.

Fact Witnesses

Subject Matter of Testimony

To the extent that additional product identification related evidence has been filed with the claims forms or will be timely supplemented on behalf of certain of the Motley Rice Claimants for certain buildings, such additional evidence is documentary and consist of building construction specifications, architectural plans, approvals or other similar

historical construction related documents, or advertisements placed by Grace in trade journals or similar publications-which further identified the presence of Grace ACM in specific buildings owned/operated by Claimants. Such documentary evidence has been filed with the Proofs of Claim and/or will be supplemented upon discovery of additional documents. This evidence may be offered as ancient documents and/or fact witnesses may be offered to authenticate such documents. In general, such fact witnesses would include Claimants' custodian of records or other similar representative.

In addition, the fact witnesses described in the above paragraph and preliminarily designated, the Motley Rice Claimants may call as fact witnesses any representative and or employee of Claimants. Any of such referenced individuals may be called by and Motley Rice Claimant on the subject of chain of custody of the ACM bulk sampled obtained from Claimants' buildings at issue and transmitted to MAS Laboratories, or with regard to other similarly related issues, including but not limited to information regarding the bulk sample data sheets. Additionally, for certain Claimants' buildings and ACM products, such individuals may provide additional product identification related factual testimony in connection with their experience acquired over decades in the inspection of hundreds of buildings which have been determined and/or admitted by Grace to contain Grace ACM products. This evidence may include, but is not limited to, the appearance and characteristics of Grace ACM in place and bulk samples of such material.

Further, with regard to the product identification issues the Motley Rice Claimants may call as fact witnesses past and/or present employees of Grace or their licenses and/or distributors and representatives. Such individuals may have knowledge

regarding the manufacture and sale of Grace's ACM products, product formulation, variation or additives, including plant and/or production changes, alterations and/or manufacturing quality control problems and/or sales/distribution market share for particular ACM products in regions of the country or states. In addition to such fact witnesses with knowledge of the subject matter described in this paragraph, the Motley Rice Claimants may call any individual listed on their preliminary product identification fact witnesses designated in Motley Rice Claimants' Preliminary Designation of Fact and Expert Witnesses.

Further, with regard to the product identification issues the Motley Rice Claimants may call as fact witnesses past and/or present employees of any business involved with contracting, distributing, installing, specifying, purchasing, removing or abating any asbestos-containing products from any of the Claimant's premises. Such individuals may have knowledge regarding the installation, purchases, distribution or removal of Grace's ACM products.

Further, the Motley Rice Claimants reserve the right to call as an expert or fact witness any other such witness listed by any other party, including Claimants, the Debtor, or the PD Committee, and the subject of their testimony will be the same as that listed by such other party.

II.

Limitations Periods

Fact and Expert Witnesses

Subject Matter of Testimony

As previously disclosed by other Claimants, the Motley Rice Claimants also believe that issues regarding statutes of limitation/repose and laches are affirmative defenses for which the Debtor has the burden of going forward and as well as the burden of proof. Debtor's Objections in the 15th Omnibus Objections does not contain any reference or citation to a specific statute or applicable state law relating to any of these affirmative defenses. Motley Rice Claimants have not been provided with notice by Debtor of any specific allegations with regard to these issues. Consequently, it is difficult if not impossible to anticipate the exact objection, if any, Debtor may have to specific claims of any of the Motley Rice Claimants.

However, notwithstanding this fact and considering the lack of notice regarding Debtor's specific objections, if any, and out of an abundance of precaution, the Motley Rice Claimants intend to preliminarily designate as fact witnesses, each of such Claimants' representatives who are described and set forth in Motley Rice Claimant's Preliminary Designation of Fact and Expert Witnesses. Such witnesses names and addresses are incorporated by reference herein as potential fact witnesses for the respective Motley Rice Claimants on the issues of Limitations periods in the event it is necessary to offer such factual testimony to rebut a specific allegation of Debtor's which has yet to be alleged.

Again, although the Motley Rice Claimants are without knowledge regarding any specific objections to their claims regarding Limitations periods, in the event that Debtors subsequently make such allegations, then the fact witnesses identified in Claimants prior disclosure might be expected to testify regarding the history of the buildings, the Grace ACM products, and the Claimants' knowledge or lack thereof with regard to such facts as

well as the presence of building contamination, if any, associated with the said Grace ACM products.

Additionally, the Motley Rice Claimants further anticipate calling as fact witnesses part and/or current representatives of Grace, the “Safe Building Alliance” and/or representatives of other former asbestos manufacturers or other companies, entities or organizations who will testify regarding the Debtor’s misrepresentations regarding their products characteristics, or ability to release asbestos fibers or hazard in relation thereto. Specifically, Grace, through its own representations and through the Safe Building Alliance, represented for many years to building owners throughout the country that their ACM fireproofing and acoustical products were safe, did not release asbestos fibers, and would not create a hazard for occupants or workers. The Motley Rice Claimants may call as a potential fact witness any such individual to testify regarding the subject matter discussed.

Subject to its reservation of rights, Motley Rice Claimants may also call Jack Halliwell, Halliwell Engineering Associates Incorporated, 865 Waterman Avenue, East Providence, RI 02914-1340. To the extent that Grace offers testimony in its statute of limitations defense concerning the knowledge of building owners, designers and applicators about the presence and potential hazard of asbestos in Grace’s Monokote products, Mr. Halliwell may testify in response to those issues. This expert testimony will, necessarily, include factual testimony regarding these topics as well.

Further, the Motley Rice Claimants hereby adopt and reserve the right to call as an expert or fact witness any other such witness listed by any other party, including

Claimants, the Debtor, or the PD Committee, and the subject of their testimony will be the same as that listed by such other party.

Dated: November 22, 2006

Respectfully Submitted by:

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